IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

LA.App..No. 270 of 2004() AND C.O.No.95/2004

LAR.6/2002 of SUB COURT,THODUPUZHA
.....

APPELLANT: RESPONDENT:

STATE OF KERALA

BY GOVERNMENT PLEADER SRI.K.V.MANOJKUMAR

RESPONDENT/CLAIMANTS:

ITTOOP GEORGE, OZHATHIL HOUSE,
THODUPUZHA.

BY ADV. SRI.R.RAJESH KORMATH
SMT.PREETHY KARUNAKARAN
SMT.M.R.MINI
SMT.MEENA.A.
SMT.SANJANA R.NAIR
SRI.JAYKAR.K.S.
SRI.RAHUL VARMA
SRI.V.S.ROBIN

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, ALONG WITH L.A.A.No.332/2004 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. NO.270 OF 2004 & C.O 95 OF 2004,
L.A.A. NO. 332 OF 2004 & C.O 76 OF 2006,
L.A.A. NO. 520 OF 2004,
L.A.A. NO. 522 OF 2004 & C.O 85 OF 2005,
L.A.A. NO. 571 OF 2004,
L.A.A. NO. 619 OF 2004 &C.O 68 OF 2006,
L.A.A. NO. 1076 OF 2004
AND
L.A.A. NO. 8, 18, 249, 713, 966 & 1320 OF 2005

Dated this the 11th day of October, 2007.

J U D G M E N T

Kurian Joseph, J.

These are cases filed by the State as well as the claimants. (In some of the cases claimants have filed cross appeal/cross objection). Acquisition pertains to formation of Thodupuzha Kothaikunnu bye pass.

2. In the nature of the order we propose to pass, we do not think it necessary to extensively refer to the facts or contentions taken by either the State or the counsel appearing for the claimants. As far as the State is concerned the main grievance is that though the documentary evidence sought to be relied on by the claimants have been found to be not acceptable, yet the reference court placed reliance on one of the documents (Exhibit A4) for fixing the compensation.

3. As far as the claimants are concerned, their grievance is that though they had taken out a commission and though the report of the Commissioner also forms part of the record under Order XXVI Rule 10 of the Code of Civil Procedure, the reference court has not even referred to the same. There are other contentions as well like variation in the extent, A7 property being similar and nearer etc. Though the reference court made extensive reference to various documents, the report of the Advocate Commissioner and the plan and sketch were not considered. Stating that the acquired property is in a commercially important area, after rejecting the documentary evidence, fixation has been made at the rate of Rs. 35,000/- per cent for dry land with proportionate reduction for the wet land. We are afraid, the said approach is not proper.

In the above circumstances, we are of the view that the matters require proper consideration at the hands of the reference court itself, since the said court has to fix the land value based on the evidence available on record and make a proper fixation. We set aside the judgment and decree in all these cases and remit the matters to the reference court for fresh

consideration in accordance with law. Parties shall appear before the reference court on 19.11.2007. In view of the remand as above, the party appellants as well as cross objectors shall be entitled to refund of the court fee. We make it clear that it will be open to both sides to adduce fresh evidence. The reference court shall dispose of the cases within a period of four months from the date of first appearance.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE

smp

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

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